



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
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Legal & Regulatory Group

June 1, 2005

Via E-Mail

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex K)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: TSR Fee Rule, Project No. P034305

Dear Sir/Madam:

The National Automobile Dealers Association (“NADA”) submits the following comments in response to the Federal Trade Commission’s (“FTC” or “Commission”) Notice of Proposed Rulemaking requesting comment on its proposal to amend the Telemarketing Sales Rule (“TSR”) to revise the fees charged to entities accessing the National Do Not Call (“DNC”) Registry.¹

NADA represents approximately 20,000 franchised automobile and truck dealers who sell new and used vehicles and engage in service, repair and parts sales. Our members employ more than 1.3 million people nationwide. A significant number of our members are small businesses as defined by the Small Business Administration.

NADA strongly supports the Commission’s proposal to continue allowing all entities accessing the national registry to obtain the first five area codes of data for free.² The Original Fee Rule and the Revised Fee Rule correctly determined that free access to the first five area codes balanced the goals of adequately funding the national registry and providing appropriate relief for small businesses. Unlike professional telemarketing companies that place numerous calls within a single area code, many small businesses make telemarketing calls on a much smaller scale, yet are still required to join the national registry. Removing the five area code exemption would disproportionately impact these businesses as they would pay the same per area code fee as larger telemarketers, that place a much heavier volume of calls to phone numbers registered within these area codes.

The Commission requests comments addressing the propriety of changing or eliminating the number of area codes for which there is no charge. Although the Commission notes that the cost of accessing data in the registry is relatively modest,³ we feel that even modest charges still place

an unacceptable burden on small businesses. Removing the exemption all together would have a significant impact on our members and many other small and medium size businesses. As stated in previous comments to the Commission, many of our members are businesses engaged in telemarketing calls to consumers: (i) that are located in five or fewer area codes, or (ii) primarily consist of calls to consumers with whom they have an established business relationship or have obtained prior express permission to call. These businesses have already assumed significant training, systems and other compliance costs associated with the National DNC rules and other federal and state telemarketing restrictions. In the last few years, our members became subject to CAN-SPAM Act restrictions on commercial e-mail messages and several other regulatory requirements unrelated to marketing. Imposing a fee to access the first five area codes would impose a new burden on small entities that already are struggling to comply with the ever-expanding list of federal requirements affecting their businesses.

The Commission also requests comment on whether any changes in the number of free area codes would affect an entity's business practice. Since most major metropolitan areas cover more than one area code, most businesses that serve that area would be affected if the number of free area codes were reduced. For example, the DC Metropolitan area consists of the following area codes: 202, 703, 571, 301, 240. If a small automobile dealership in this area were limited to one or two free area codes on the registry, they would have to pay to access the remaining area codes. Thus, any reduction in the number of free area codes would likely have a significant economic impact on small businesses.

We thank you for the opportunity to comment on this matter.

Sincerely,

Smitha Koppuzha,
Staff Attorney

¹ 70 Fed. Reg. 20,848 – 20,852 (April 22, 2005).

² 70 Fed. Reg. 20,850.

³ Id.